

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

NETLIST, INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

Civil No. 2:22-cv-00293-JRG  
(Lead Case)

**JURY TRIAL DEMANDED**

NETLIST, INC.,

Plaintiff,

v.

MICRON TECHNOLOGY TEXAS, LLC, et al.,

Defendants.

Civil No. 2:22-cv-00294-JRG  
(Member Case)

**JURY TRIAL DEMANDED**

**SAMSUNG'S SUR-REPLY TO NETLIST'S MOTION FOR SUMMARY  
JUDGMENT ON SAMSUNG'S DEFENSE OF EQUITABLE ESTOPPEL (DKT. 357)**



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**TABLE OF EXHIBITS TO SAMSUNG'S OPPOSITION**

#	Description
1	Deposition Transcript of Mario Martinez (Nov. 13, 2023) (excerpts)
2	Deposition Transcript of Mario Martinez from <i>EDTX1</i> (Dec. 7, 2022) (excerpts)
3	Transcript of Bench Trial from <i>EDTX1</i> (public, excerpts)
4	Deposition Transcript of Noel Whitley (Feb. 3, 2017) (NL-S-293_00004630)
5	Ltr. fr. [REDACTED] re Licensing Discussion (Dec. 4, 2015) (NL-S-293_00005694)
6	Meeting Minutes for JC-42 Committee (June 9-17, 2021) (JEDEC00010367)
7	Meeting Minutes for JC-42 Committee (Dec. 7-14, 2021) (JEDEC00010459)
8	Def.'s Mtn. to Strike, <i>Netlist, Inc. v. Google LLC</i> , No. 3:09-CV-05718-RS (N.D. Cal.) (excerpts)
9	Deposition Transcript of Hyun Lee from <i>EDTX1</i> (Nov. 29, 2022)
10	JEDEC Disclosure Form (JEDEC-00020635)
11	Minutes of Meeting No. 163, JC-40 (Sept. 16, 2010) (PRIOR_ART-00080821)
12	December 2010 Ballot List (PRIOR_ART-0004945)
13	Minutes of Meeting No. 28, JC-45 (Sept. 15, 2010) (PRIOR_ART-00080793)
14	Declaration of Joseph McAlexander III, with Attachment A (Jan. 29, 2024) (excerpts)
15	Transcript of Pre-Trial Conference from <i>EDTX1</i> (March 28, 2023) (public, excerpts)
16	Declaration of Daniel A. Tishman (January 30, 2024)

**TABLE OF ABBREVIATIONS**

Abbreviation	Description
'912 patent	U.S. Patent No. 7,619,912
<i>EDTX1</i>	<i>Netlist Inc. v. Samsung Elecs. Co.</i> , No. 2:21-CV-463 (E.D. Tex.)
JEDEC Policy	JEDEC Manual of Organization and Procedure, Dkt. 357-3
NSMF	Netlist's Statement of Material Facts
RAND	Reasonable and Non-Discriminatory
Representative	Committee Member as defined in the JEDEC Policy, § 8.2.1
SSMF	Samsung's Counter-Statement of Material Facts

**I. Netlist Does Not Dispute That It Failed To Disclose the '912 as Essential to DDR4**

In its reply brief, Netlist does not dispute that it failed to disclose the '912 patent as potentially essential to the DDR4 standards at issue in this case. Netlist's failure to do so constitutes a breach of its duty to disclose under JEDEC Policy, giving rise to Samsung's equitable estoppel defense. Netlist argues that its blanket disclosure of the '912 patent to "JEDEC committees" and as essential to DDR3 (not at issue in this case and thus, irrelevant) satisfies any disclosure obligations. However, JEDEC committees handle multiple standards, so mere disclosure to committees is insufficient. By failing to provide the detailed information required by the JEDEC Policy (e.g., "JEDEC Activity," "Keywords," "Item No.," and "JEDEC Publication"), Netlist did not provide fair notice that it believed that the '912 patent was potentially essential to the DDR4 standards at issue in this case. *See* Dkt. 432 at 4-7.

Netlist does not dispute these facts, but instead argues that it is excused of identifying the '912 patent as essential to DDR4 because it believes that "DDR4 is an evolution of the DDR3 standard," Dkt. 518 at 1. However, Netlist cites no authority holding that disclosing a patent as to one standard alleviates a member's obligation to disclose that patent as potentially essential to an alleged "evolution" of that standard. *See* NSMF, ¶ 5; SSMF, ¶ 5. In any event, it is JEDEC's legal department—not Netlist—that is charged with determining whether a standard is a continuation of a previous standard. Dkt. 432 at 7. Netlist cannot demonstrate the absence of material facts necessary to support summary judgment dismissing Samsung's equitable estoppel defense.

**II. Netlist's Prior Belief in Essentiality Triggered Its Duty To Disclose**

Netlist's prior belief in the essentiality of the '912 patent as to DDR4 triggered its duty to disclose. In particular, overwhelming evidence supports a finding that Netlist at least previously believed the '912 patent to be essential to DDR4. For example, [REDACTED]. *See* Ex. 4 at 25:23-26:5. Netlist then informed Samsung that [REDACTED]

[REDACTED]

asserted the '912 patent against Samsung based solely on compliance with DDR4 standards, and then provided infringement contentions based on compliance with DDR4 standards. *See* SSMF, ¶ 3. At each of these points in time, Netlist must have believed that the '912 patent was at least potentially essential to DDR4, yet failed to disclose it as such.

Further, Netlist continues to refuse to make its JEDEC representative Dr. Hyun Lee available for a deposition, making summary judgment improper. *See* Fed. R. Civ. P. 56(d). Contrary to Netlist's assertion that Samsung failed to provide "a sworn declaration required by Rule 56(d)," Dkt. 518 at 2 n.3, Samsung's opposition attached a sworn declaration as Exhibit 16, demonstrating that Samsung has sought Dr. Lee's deposition, but Netlist has refused to make him available.

### **III. Netlist's Failure To Disclose Prejudiced Samsung**

Ample evidence supports a finding that Samsung has been prejudiced by Netlist's nondisclosure. *Contra* Dkt. 432 at 8. Netlist has known of the '912 patent's potential essentiality to DDR4 for many years, likely dating back to [REDACTED] [REDACTED] and at the latest [REDACTED] [REDACTED]. *See* SSMF, ¶ 3. Had Netlist disclosed the '912 patent as potentially essential to DDR4, Samsung (and other JEDEC members) could have evaluated "reasonable workarounds" as directed by the JEDEC Policy. *See* Dkt. 357-3, § 8.2.2.2. Also, Samsung could have elected not to support the accused features, given that there is no evidence that its customers use them. *See* Dkt. 432 at 8; Dkt. 518 at 1.

Netlist's argument that its [REDACTED] [REDACTED] Dkt. 518 at 2, misses the point. This letter is not only direct evidence of a belief [REDACTED] [REDACTED].

At a minimum, genuine disputes of material fact foreclose summary judgment for Netlist.

Dated: February 14, 2024

Respectfully submitted,

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## CERTIFICATE OF SERVICE

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